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**International Brotherhood of Teamsters, Local Union
No. 89 (United Parcel Service, Inc.) and Darrell
R. Hall.** Cases 09–CB–011985 and 09–CB–012018

July 23, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

Upon a charge filed May 14, 2008, by Darrell R. Hall, an amended charge filed July 7, 2008, and an additional charge filed August 5, 2008, the General Counsel of the National Labor Relations Board issued an order consolidating cases, a consolidated complaint, and a notice of hearing on August 25, 2008, alleging that International Brotherhood of Teamsters, Local Union No. 89 had violated Section 8(b)(1)(A) of the Act. Specifically, the consolidated complaint alleges that the Respondent Union violated Section 8(b)(1)(A) by (1) failing to inform Hall that he had a right to refrain from paying any union dues, nonmember financial core fees, or reduced *Beck* fees to the Union because of his recent expulsion from the Union; (2) refusing to reimburse Hall for the reduced *Beck* fees that were deducted from his pay from the time of his expulsion in November 2007 to April 6, 2008; and (3) threatening to sue Hall in civil court to recover the amount of reduced *Beck* fees that he failed to pay subsequent to April 6, 2008.

On November 3, 2008, the General Counsel, the Union, and Hall filed with the Board a joint stipulation and a joint motion to transfer this proceeding to the Board. The parties waived a hearing before an administrative law judge and agreed to submit the case directly to the Board for findings of fact, conclusions of law, and a decision and order, based on a record consisting of the charges, the consolidated complaint, the answer, the stipulation of facts and attached exhibits, the statement of issues presented, and the parties' statements of position.

On December 30, 2008, the Board approved the stipulation of facts and granted the motion. Thereafter, the General Counsel and the Union filed briefs, and the Union filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

United Parcel Service (UPS or the Employer) is a corporation with offices and places of business in various locations, including Louisville, Kentucky. The Employer is engaged in the interstate transportation of freight and the delivery of parcels. During the calendar year ending December 31, 2008, UPS derived revenues in excess of \$50,000 for the transportation of freight and the delivery of parcels from the Commonwealth of Kentucky directly to points outside the Commonwealth of Kentucky. We find that UPS is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act. The Charging Party is a former member of the Union still employed by UPS, whom the Union continues to represent as a member of the bargaining unit at a UPS facility in Louisville, Kentucky.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Stipulated Facts*

At all relevant times, the Union and the Employer were parties to a national collective-bargaining agreement negotiated by the Teamsters United Parcel Service National Negotiating Committee, a number of Teamsters local unions (including the Respondent Union), and the Employer. The contract contained union-security and checkoff provisions, whereby the Employer deducted the monthly union dues owed by each bargaining unit member from the member's paycheck and forwarded the moneys deducted to the Union. Hall was employed at the Employer's Louisville facility and was a member of the Union and a shop steward until October 27, 2007, when he was expelled for campaigning for a rival union.¹

From the date of Hall's expulsion until April 30, 2008,² UPS made monthly deductions from his paychecks in the amount of an objecting nonmember's "*Beck*" fee—i.e., the reduced fee paid by a represented employee who objects to paying the full amount of a member's dues, pursuant to *Communications Workers of America v. Beck*, 487 U.S. 735 (1988)—and forwarded those deductions to the Union.

On April 6, Hall sent a letter to the Union demanding that it "not charge or attempt to collect any dues or fees from me," and that it refund "all of the dues that have been collected from my paychecks" since the date of his expulsion. On May 27, the Union responded, stating that

¹ There is no contention that Hall's expulsion from the Union was unlawful.

² All subsequent dates are in 2008.

it would “no longer bill your financial obligations to Local 89 dues on the monthly check off forms sent to your employer,” and enclosing a refund check to Hall in the amount of the *Beck* fees that had been withheld from him for the month of April. The Union’s letter also stated, “We are currently considering other options because we do not believe federal labor law requires us to tolerate ‘free riders’ who expect us to provide representation to them without paying their share of the costs.”

On July 18, the Union sent another letter to Hall, stating that “non-members of Local 89 must still pay a ‘financial core’ fee to the local union to cover their share of the costs of representation.” This letter attached a copy of the Union’s “financial core policy” and a checkoff authorization card for financial-core fee deductions, but also indicated that Hall could in the alternative make his fee payments directly to the Union. The letter then stated that if Hall refused to pay the fee, the Union would sue for payment in court under a quantum meruit theory. Since April 2008, however, the Union has not collected or sought to collect any additional fees from Hall nor paid him any additional reimbursement, pending the outcome of this case.

B. The Parties’ Contentions

The General Counsel contends that the Union could not lawfully require Hall to pay any union dues, nonmember financial core fees, or reduced *Beck* fees—that is, any amount whatsoever—following his expulsion from membership, because his expulsion was “for reasons other than his failure to pay union dues” within the meaning of Section 8(a)(3), Proviso B. Accordingly, the General Counsel argues, the Union’s postexpulsion collection of reduced *Beck* fees from Hall, its failure to refund those fees, and its threat to seek payment of additional such fees in court subsequent to his objection were unlawful. For these contentions, the General Counsel relies solely on *Transportation Workers Local 525 (Johnson Controls World Services)*, 326 NLRB 8 (1998) (*Johnson Controls II*), vacating *Transportation Workers Local 525 (Johnson Controls World Services)*, 317 NLRB 402 (1995) (*Johnson Controls I*). The General Counsel also asserts that the Union acted unlawfully by failing to inform Hall that he was no longer required to pay any union dues, nonmember financial core fees, or reduced *Beck* fees because of his expulsion from membership.

The Union contends that it had the right under *Beck* to collect core fees from Hall after his expulsion and that it therefore committed no violation by collecting the fees before his objection, retaining them afterward, and threatening to sue in court for fees subsequently accrued while it continued to represent Hall. The Union argues

that it was consequently under no obligation to inform Hall that he had no monetary obligation after his expulsion. With respect to its statement that it would pursue legal action, the Union also relies on *Bill Johnson’s Restaurants v. NLRB*, 461 U.S. 731 (1983), and *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002).

C. Discussion

1. *Johnson Controls II*

Union-security clauses in collective-bargaining agreements are authorized under Section 8(a)(3), with the following pertinent limitation in its Proviso B:

[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization [pursuant to a union-security clause]. . . (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues . . . uniformly required as a condition of . . . retaining membership.³

In *Johnson Controls II*, on which the General Counsel relies, the respondent union had lawfully expelled an employee for signing a decertification petition, but was found to have unlawfully threatened him with discharge under the applicable union-security clause if he failed to continue paying membership dues or fee equivalents applicable to nonmembers. The Board found that “the clear language of Section 8(a)(3) and Section 8(b)(2)” — and specifically the terms “membership” and “reasons other than” the failure to pay dues, as used in Proviso B—made the union’s threat of discharge unlawful. 326 NLRB at 9. The Board noted that the expulsion of a member for disloyalty was necessarily a termination of membership “for reasons other than the failure of the employee to tender periodic dues.” *Id.* Accordingly, in the Board’s view, the enforcement of a union-security clause against an expelled employee, for the purpose of collecting membership dues or the equivalent fee paid by nonmembers, by threatened or attempted discharge, was barred by Proviso B. *Id.*⁴

The General Counsel, however, offers little to support his assertion that *Johnson Controls II* similarly extin-

³ Similarly, Sec. 8(b)(2) makes it unlawful for a union “to cause or attempt to cause an employer to discriminate against an employee in violation of [Sec. 8(a)(3)] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues . . . uniformly required as a condition of acquiring or retaining membership.”

⁴ No party in this case has argued that *Johnson Controls II* should be overruled or modified, and we express no opinion about the correctness of that decision.

guishes the Union's right to seek dues from Hall by means—as here—other than threat of discharge, while continuing to represent him. We find that the stipulated record in this case does not establish the violations alleged in the complaint, on two grounds. First, the General Counsel has misapplied *Johnson Controls II* to the facts of this case. Second, there is no statutory basis in the Act for finding the Union's actions unlawful.

Johnson Controls II, by its terms, goes no farther than to bar the threatened or actual enforcement of a union-security clause by threat of discharge. It neither holds nor states that a union has no entitlement to fees from an ex-member who has been lawfully expelled but continues to receive representation. Nor does *Johnson Controls II* suggest that the union is barred from seeking ongoing payment in some form—at least in the reduced amount of *Beck* fees⁵—from a lawfully expelled employee by lawful means other than by threatening or seeking the employee's discharge.

The Union in this case never threatened Hall with discharge or attempted to procure his discharge for non-payment of dues after his expulsion from membership. Nor is there any allegation that the Union failed at any time to comply with its duty to represent Hall fairly after his expulsion. The Union's threat of a collection lawsuit against Hall did not target any of his protected activity. Accordingly, none of the Union's actions falls within the prohibition imposed by *Johnson Controls II*, and that case is plainly distinguishable from the instant proceeding. *Johnson Controls II* is therefore not controlling here.

2. Additional authority

Looking beyond Proviso B, neither Section 8(a)(3) nor Section 8(b), by their terms or by implication, proscribes the actions taken by the Union in this case. Section 8(a)(3) authorizes unions and employers to negotiate union-security clauses that require membership in the union “as a condition of employment.” *Johnson Controls II*, the currently applicable precedent, applies that section, its Proviso B, and Section 8(b)(2) to bar a union and an employer from using a threat of discharge to enforce a union-security clause against an employee expelled from membership for disloyal misconduct. However, Section 8(a)(3) does not prohibit a union from attempting to collect dues or equivalent fees by any other lawful means from such an employee or from any other recalcitrant nonmember whom the union is required to represent. Similarly, Section 8(b)(2) echoes Proviso B in barring a union from causing an employer to discharge

an employee for any reason “other than his failure to tender” dues. But as with Section 8(a)(3), neither Section 8(b) nor any other provision in the Act bars a union from seeking dues or core fees by other lawful means from an employee who remains in the represented bargaining unit.⁶

The Act's consistent exceptions for “failure to tender dues” express its policy favoring the sharing among all represented employees of the cost of representation pursuant to a lawful union-security provision. The Supreme Court expressly acknowledged this policy in *Beck*, reaffirming that unions need not tolerate free riders and that “Congress [in the Taft-Hartley Act] recognized that in the absence of a union-security provision ‘many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.’” 487 U.S. at 748–749 (quoting *NLRB v. General Motors Corp.*, 373 U.S. 734, 740–741 (1963)).⁷ Neither *Beck* nor its predecessors distinguished employees who had been lawfully expelled from their union from other employees who continue to receive representation by the union.

The legislative history of the Taft-Hartley Act, referenced in *Beck*, further supports this reading of the statute. The section of the Senate Labor Committee report accompanying Section 8(a)(3) characterized the statutory text authorizing union-security clauses and their enforcement as follows:

⁶ Although we have found in some other cases that a union's attempt to pursue dues from nonmembers in court was unlawful, the union's claim in those cases was not based, as here, on a valid union-security clause. For example, in *Quebecor Printing Hazelton*, 330 NLRB 32, 34–35 (1999), *enfd.* 245 F.3d 231 (3d Cir. 2001), the collective-bargaining agreement had a clause which merely required employees to “apply” for membership as a condition of employment. The Third Circuit agreed with the Board that the union's collection action was unlawful for the sole reason that the clause did not require employees to maintain their membership as a condition of employment. 245 F.3d at 244–245. In *Professional Assn. of Golf Officials*, 317 NLRB 774 (1995), where the contract had a checkoff provision but not a union-security clause, the Board found that the union “had no right to commence a legal action designed to force [the employee], in the absence of a union security provision or any effort . . . by him to become a union member, to provide such support.” *Id.* at 777. And in *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB 234, 235 (2010), *enfd.* 440 Fed.Appx. 524 (9th Cir. 2011), the contract containing the union-security clause had expired and the Board simply reaffirmed that such a clause did not survive contract expiration and therefore could not be enforced postexpiration. By contrast with each of these cases, the Union here was acting under a valid union-security clause that was currently in force.

⁷ Quoting S. Rep. No.105, 80th Cong, 1st Sess., at 6, 1 Leg. Hist. 412 LMRA. (1947). “As far as the federal law [by the enactment of Proviso B] was concerned, *all* employees could be required to pay their way.” *General Motors*, *supra*, 373 U.S. at 741 (emphasis added).

⁵ The Union here never sought to collect from Hall any moneys other than the reduced core fees provided for objectors in *Beck*.

[T]hese amendments remedy the most serious *abuses* of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability *by eliminating "free riders"* the right to continue such arrangements.

S. Rep. No. 105, 80th Cong., 1st Sess., at 7, 1 Leg. Hist. 413 LMRA (1947) (emphasis added). The reference to "abuses" indicates that the amendments were not intended to penalize a union for taking a nonabusive action—e.g., the lawful expulsion of a member for assisting a rival union. Moreover, the union objective of "eliminating free riders" was viewed as legitimate.

In like manner, Senator Taft, the chief sponsor of the Taft-Hartley Act, characterized the effect of Proviso B as follows: "[W]hat we do, in effect, is to say that *no one* can get a free ride in such a [union] shop." Leg. Hist. at 1010 (emphasis added). Senator Taft went on to explain the meaning of the proviso by citing an incident in the Labor Committee's record in which a union member had witnessed a shop steward hit a foreman and testified in court to what he had seen. The member was subsequently expelled from the union in reprisal, and "under the union agreement the employer would have to fire him. Under this bill the employer would not have to fire that man *unless he did not pay his union dues.*" Id. (Emphasis added.) At a later point, Senator Taft was even more explicit:

So, if a union fires a man for some reason other than nonpayment of dues: *If the employee is willing to pay his dues . . . then the union cannot compel his employer to fire him because he is no longer a member of the union. . . .*

Id. at 1096 (emphasis added). The clear implication again is that an employee expelled from the union remains under a dues obligation.

In short, all of the judicial and legislative authority cited above counsels that we should interpret Proviso B narrowly with respect to restricting the collection of dues from employees who have been expelled for lawful reasons unrelated to nonpayment. This authority militates against finding that the Union in this case acted unlawfully by threatening Hall with a lawsuit aimed solely at dues collection.⁸

The Court of Appeals for the District of Columbia Circuit has noted, pursuant to *Beck*, that to hold disciplined members immune from any fee obligation would not only permit occasional free riders but would actively encourage them. In *Gilbert v. NLRB*, 56 F.3d 1438 (D.C.

Cir. 1995), cert. denied 516 U.S. 1171 (1996), enfg. *Boilermakers (Kaiser Cement Corp.)*, 312 NLRB 218 (1993), the court cautioned that the result of such a holding would be that an employee "would be free to avoid his or her financial obligation to a union merely by flouting the union's rules, submitting to discipline . . . and then refusing to pay any membership dues. . . ." 56 F.3d at 1445. As the court recognized, such a scenario "flies in the face" of the Court's holding in *Beck* "that unions need not tolerate free riders." Id. This reasoning applies with equal force to Hall, the lawfully expelled employee in this case, as to the disciplined member in *Gilbert*.

There is no question that an employee who has been lawfully expelled or disciplined by a union can—like a *Beck* objector who voluntarily resigns from or refuses to join the union—reduce his or her monetary obligation to the amount chargeable for representational expenses.⁹ However, the Act does not bar a union from seeking payment of core fees from such an employee, as the Union did here by threat of a collection lawsuit. We do not perceive any compelling policy reason for reading Proviso B in the expansive manner urged by the General Counsel; rather, we share the contrary policy concerns expressed by the D.C. Circuit in *Gilbert*.

We therefore conclude that the Union did not violate the Act by threatening to sue Hall for unpaid dues.¹⁰ It follows that the Union also had no obligation to inform Hall, as alleged by the General Counsel, of his right to "refrain" from paying any dues or equivalent fees charged to nonmembers at the time of his expulsion.¹¹

⁹ There is no issue of failure by the Union to respect Hall's *Beck* rights in this case, since from the date of his expulsion the Union treated Hall as a *Beck* objector and sought to collect only the amount he would owe if he had filed a *Beck* objection.

¹⁰ We accordingly find it unnecessary to address the Union's invocation of the Supreme Court's decisions in *Bill Johnson's Restaurants v. NLRB* and *BE & K Construction Co. v. NLRB*, supra.

¹¹ Member Miscimarra agrees that the Union's actions in this case were not unlawful as alleged in the complaint. In his view, however, a union should be required to provide employees with notice of their fee options (nonmember financial core fee or reduced *Beck* fee) when they are expelled, even if the union previously provided the notice required under *California Saw & Knife Works*, 320 NLRB 224 (1995), enf'd. 133 F.3d 1012 (7th Cir. 1998), cert. denied 525 U.S. 813 (1998), at the time it initially sought to impose the union-security obligation. Member Miscimarra would apply this requirement prospectively. Employees in Hall's position would have no reason to know that a notice to potential *Beck* objectors pertained to them. The *Beck* notice, furnished to employees eligible for union membership, does not inform employees expelled from membership that their financial obligations as expelled former members are identical to those of employees who resign from or refuse to join the union on their own initiative. Indeed, in this case, neither Hall nor the General Counsel believed that Hall's obligations were the same as those of *Beck* objectors. The Board has "consistently required unions to provide accurate information to bargaining unit

⁸ In finding the Union's threat lawful, we express no view on the merits of the Union's theory of liability in quantum meruit.

TEAMSTERS LOCAL 89 (UPS)

Although we have found that unions' duty of fair representation imposes certain notice obligations to members,¹² such obligations have never included notice of a right of an expelled member to refrain from paying any dues.¹³

We similarly reject the General Counsel's allegation that the Union was required to disgorge the fees it received from deductions in Hall's pay before he issued his demand that the Union cease collecting dues from him. There is no basis for finding that the Union came under any obligation to disgorge fees it had collected from Hall under a valid union-security clause before it even received his objection.¹⁴

In sum, we conclude that the Union did not violate the Act by threatening to sue Hall for the fees he accrued while the Union continued to represent him after his expulsion; by not giving him notice that he had no further obligation to pay dues; or by refusing to disgorge the fees it collected from Hall after his expulsion but before he registered an objection. We therefore dismiss the complaint.

employees regarding the extent of their financial obligations to the union." *California Saw*, 320 NLRB at 233.

¹² For example, a union must notify members of their *Beck* rights; it must also notify them of *their dues arrears prior to seeking discharge for nonpayment*. See *California Saw & Knife Works*, supra; *August Busch & Co.*, 203 NLRB 1041 (1973), *enfd.* 502 F.2d 1160 (1st Cir. 1974).

¹³ *Machinists District Lodge 94 (McDonnell Douglas)*, 283 NLRB 881 (1987), cited by the General Counsel in support of his failure-to-give-notice allegation, is clearly distinguishable. In *McDonnell Douglas*, the Board adopted, without discussion, the judge's finding that the union was required to provide notice to disciplined former members that the dues obligation would not be enforced against them through a threat of discharge pursuant to a union-security clause. 283 NLRB at 893. Here, however, there was no threat or attempt to procure Hall's discharge pursuant to a union-security clause; in fact, the Union made no reference to Hall's employment status at all. In addition, the General Counsel's allegation is not that the Union unlawfully failed to inform Hall that the union-security clause would not be enforced by discharge, but that the Union failed to inform Hall that he had the right to refrain from paying any dues or fees whatsoever. *McDonnell Douglas* does not support such an allegation.

¹⁴ See *Auto Workers Local 95*, 337 NLRB 237, 240–241 (2001) (employee was not entitled to *Beck*-related backpay from dues collected before he communicated a *Beck* objection to the union), citing *Railway Clerks v. Allen*, 373 U.S. 113, 117–119 (1963), and *Machinists v. Street*, 367 U.S. 740, 774 (1961) ("[D]issent is not to be presumed; it must affirmatively be made known to the union by the dissenting employee.") See also *Chicago Teachers Local 1 v. Hudson*, 475 U.S. 292, 306 *fn.* 16 (1986) (same).

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 23, 2014

Mark Gaston Pearce, Chairman

Phillip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD